

BEFORE LINDA McCULLOCH, STATE SUPERINTENDENT OF PUBLIC INSTRUCTION,  
STATE OF MONTANA

\*\*\*\*\*

J.B. and L. B. for C.B.,	)	
	)	
Appellants,	)	OSPI 312-07
	)	
vs.	)	<b>DECISION AND ORDER</b>
	)	
EUREKA SCHOOL DISTRICT NO. 13,	)	
	)	
Respondent.	)	
	)	
	)	

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Having reviewed the record and considered the parties' briefs, the Superintendent of  
Public Instruction issues the following Decision and Order:

**DECISION AND ORDER**

The May 18, 2007 Findings of Fact, Conclusions of Law and Order issued by the Lincoln  
County Superintendent of Schools are hereby AFFIRMED.

**PROCEDURAL HISTORY**

On October 5, 2006, the Eureka School District Board of Trustees (Board) voted to expel  
C.B. from school for the 2006 – 2007 school year. On October 19, 2006, J.B. and L.B., on  
behalf of C.B., their son and grandson respectively, (Bs), filed a Notice of Appeal with the  
Lincoln County Superintendent of Schools appealing the October 5, 2006 decision of the District

1 to expel C.B. from school for the 2006-2007 school year. (Notice of Appeal dated 10/18/06.)

2 On November 28, 2006, Lincoln County Superintendent of Schools Ron Higgins held a  
3 pre-hearing conference attended by J.B. and L.B., James Bartlett, attorney for Bs, Gary Blaz,  
4 Eureka Superintendent of Schools, and Alan Robbins, Principal of Lincoln County High School.  
5 (Transcr. of Pre-hearing Conference, November 28, 2006.)

6 The District agreed to rehear the recommendation for expulsion. (Letter from Elizabeth  
7 Kaleva dated 12/27/06 to County Superintendent Ron Higgins.) Counsel for Bs and Counsel for  
8 the District requested that the hearing set before the County Superintendent be vacated and  
9 continued in light of the District's rehearing; the County Superintendent continued the hearing.  
10 (Letter from Elizabeth Kaleva dated 12/27/06 to County Superintendent Ron Higgins; Order  
11 Continuing Hearing Date dated 12/29/06.) The rehearing occurred on January 10, 2007, and the  
12 Eureka School District Board of Trustees voted to expel C.B. from school. (Uncontested fact,  
13 pp. 3:24 - 4:9, Transcr. of Pre-hearing Conference Call, 2/20/07.)

14 On January 22, 2007, Bs filed a Restated Notice of Appeal and Request to Proceed with  
15 Hearing. (Restated Notice of Appeal & Request to Proceed with Hearing dated 1/19/07.) On  
16 February 20, 2007, Country Superintendent Ron Higgins held a pre-hearing conference call with  
17 James Bartlett, attorney for C.B., and Elizabeth Kaleva, attorney for Eureka School District #13,  
18 participating. (Transcr. of Pre-hearing Conference Call, February 20, 2007.)

19 The District filed a Partial Motion for Summary Judgment and Brief in Support on  
20 February 27, 2007. (Partial Motion for Summary Judgment and Brief in Support dated 2/24/07.)  
21 Bs filed a Brief in Opposition. (Petitioners' Brief in Opposition to Respondent's Partial Motion  
22 for Summary Judgment dated 3/13/07.) The District filed a Reply Brief on March 20, 2007.  
23 (Reply Brief in Support of Motion for Summary Judgment dated 3/19/07.) The hearing before  
24 the County Superintendent was held March 23, 2007. Both parties submitted proposed Findings  
25 of Fact, Conclusions of Law and Orders following the close of the hearing. (Petitioners'  
Proposed Findings of Fact, Conclusions of Law and Order dated 4/19/07 and Respondent's

Proposed Findings of Fact, Conclusions of Law and Order dated 4/19/07.)

The Lincoln County Superintendent of Schools issued his Findings of Fact, Conclusions of Law and Order on May 18, 2007, finding the Eureka School Board acted within its authority to expel CB for violation of the District's hazing and bullying policy. (Proposed [sic] Findings of Facts, Conclusions of Law and Order dated 5/18/2007.) Bs filed their Notice of Appeal with the State Superintendent on May 23, 2007.

### **ISSUE ON APPEAL**

Did the County Superintendent correctly find that the District complied with due process requirements when the Eureka School Board expelled C.B. for violation of school policy?

### **STANDARD OF REVIEW**

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. § 2-4-704 (2007) and adopted by the State Superintendent in Admin. R. Mont. 10.6.125 (2005):

(4) The state superintendent may not substitute his/her judgment for that of the county superintendent as to the weight of the evidence on questions of fact. The state superintendent may affirm the decision of the county superintendent or remand the case for further proceedings or refuse to accept the appeal on the grounds that the state superintendent fails to retain proper jurisdiction on the matter. The state superintendent may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings of fact, conclusions of law and order are:

- (a) in violation of constitutional or statutory provision;
- (b) in excess of the statutory authority;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable probative and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion;
- (g) affected because findings of fact upon issues essential to the decision were not made although requested.

Admin. R. 10.6.125 (4) (2005).

Findings of fact are reviewed under a clearly erroneous standard. *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990). The Montana Supreme Court set forth the three prongs of the clearly erroneous standard of review which applies to findings of fact:

We adopt the following three-part test to determine if a finding is clearly erroneous. First, the Court will review the record to see if the findings are supported by substantial evidence. Second, if the findings are supported by substantial evidence we will determine if the trial court has misapprehended the effect of evidence. *Western Cottonoil Co. v. Hodges* (C.A. 5th 1954), 218 F.2d 158; *Narragansett Improvement Company v. United States* (C.A. 1st 1961), 290 F.2d 577. Third, if substantial evidence exists and the effect of the evidence has not been misapprehended the Court may still find that “[A] finding is ‘clearly erroneous’ when, although there is evidence to support it, a review of the record leaves the court with the definite and firm conviction that a mistake has been committed.” *U.S. v. U.S. Gypsum Co.* (1948), 333 U.S. 364, 68 S. Ct. 525, 92 L. Ed. 746. *Interstate Production Credit v. DeSaye*, 250 Mont. 320, 323, 820 P.2d 1285, 1287 (1991).

Conclusions of law are reviewed to determine if the interpretation of the law is correct. "The reasoning for simply determining if the [superintendent's] conclusions are correct is that no discretion is involved when a tribunal arrives at a conclusion of law – the tribunal either correctly or incorrectly applies the law." *Steer, Inc. v. Dept. of Revenue*, 245 Mont. 470, 474, 803 P.2d 601, 603 (1990); *Baldrige v. Board of Trustees*, 264 Mont. 199, 205, 870 P.2d 711, 714 (1994).

#### FINDINGS OF FACT

1. Mr. Robbins, the Lincoln County High School principal, met with all of the students in the high school at the beginning of the school year and went over the student handbook with them, emphasizing the new hazing and bullying policy. Each student was given a copy of the student handbook. County Superintendent Hearing Transcript of Proceedings on March 23, 2007 (Transcr.) pp. 19:12 -22, 72:13-19.

2. On September 21, 2006, C.B. and T.B., incoming freshman students at Lincoln County High School in Eureka, Montana, were involved in an altercation in the school auditorium. Transcr. pp. 8-10, 44:9-14.

1           3. Mr. Robbins relied initially on the notes of Mr. Newell, a teacher at the high school  
2 who responded to the incident, Transcr. p. 8:10-19, and then conducted his own investigation.  
3 Transcr. p. 9:1-10.

4           4. C.B. slapped T.B. on the back of the head, then taunted T.B. to slap him. When T.B.  
5 did slap C.B., C.B. punched T.B. in the mouth, knocking out two of T.B.'s teeth and damaging a  
6 third tooth. Transcr. pp. 8-10.

7           5. T.B.'s slap was of minimal force. Transcr. p. 9:23-24.

8           6. All witnesses to the incident testified that C.B. was the aggressor. Transcr. pp. 9:21-  
9 22; pp. 45-46.

10          7. Board Policy 3300P provides for immediate suspension "[w]hen a student's  
11 presence poses a continuing danger to persons or property or poses an ongoing threat of  
12 disruption to the educational process."

13          8. Mr. Robbins suspended C.B. from school, pending a recommendation for  
14 expulsion. Transcr. pp. 12:12-15.

15          9. Policy 3300P required the building administrator, Mr. Robbins, to immediately  
16 report C.B.'s suspension to C.B.'s parent or legal guardian, and to "provide notice of and  
17 schedule a conference as soon as practicable following the suspension."  
18

19          10. Mr. Robbins notified L.B., C.B.'s grandmother, with whom C.B. lived, of the fight  
20 and suspension, pending a recommendation for expulsion, and met with her on September 21,  
21 2006, to discuss the specific incident and the resulting suspension. Transcr. pp. 12:18-19; 23:8-  
22 14, 94:12-15, 96:3-15. L.B. told Mr. Robbins she had another meeting but would be at school  
23 before the end of the school day. Transcr. p. 96:3-15.

24          11. Mr. Robbins called L.B. because she was the contact person designated by  
25 C.B.'s father, J.B., when C.B. was enrolled, as J.B. was often difficult to reach. Transcr.  
p. 134:19-24. L.B., rather than J.B., had enrolled C.B. in high school and in prior schools

1 over the years, per an agreement between L.B. and J.B. Transcr. p. 94:16-18, 110:13-17.  
2 Pursuant to J.B.'s divorce decree, L.B. was allowed to care for C.B. and his siblings, if  
3 J.B. wished. Transcr. p. 133:7-12. J.B. agreed that C.B. should live with L.B. Transcr.  
4 p. 133:11-18.

5 12. L.B. told J.B. of the suspension and meeting on the day they occurred.  
6 Transcr. pp. 124:23 - 125:4.

7 13. Mr. Robbins contacted Mr. Blaz, Superintendent of Schools for the Eureka School  
8 District, and informed him C.B. had been suspended, pending a recommendation for expulsion,  
9 for 10 days for fighting. Transcr. pp. 12:12-14, 20:12-14, 56:12-18.

10 14. Mr. Robbins recommended C.B.'s expulsion to Mr. Blaz as he believed C.B. was a  
11 danger to others. Transcr. pp. 13:7-14:1, 20:18-22. C.B.'s behavior log of prior disciplinary  
12 incidents in the Eureka school system reflected incidents of bullying, inappropriate physical  
13 contact, lewd conduct, in-school suspension, and placement in alternative school during his  
14 junior high years. Transcr. p. 13:4-14; Transcr. Exhibit 3. J.B. and L.B. supported the  
15 alternative school plan. Transcr. Exhibit 3. C.B. was removed to the alternative school in eighth  
16 grade. Transcr. p. 57:4-6. C.B. was moved to another English class during the current school  
17 year as he was disturbing the class in which he was initially enrolled. Transcr. p. 95:9-12. L.B.  
18 and J.B. were aware of the need to move C.B. from one English class to another due to his  
19 disruptive behavior. Transcr. p. 95:9-25. L.B. and J.B. were also aware of previous disciplinary  
20 problems C.B. had while in the Eureka School system. Transcr. pp. 111:11 – 112:3, 131:11-22.

21 15. Mr. Blaz recommended C.B.'s expulsion to the school board based on multiple  
22 incidents in which C.B. was involved over the prior six years, and his belief that C.B. was a  
23 danger to other students in the school district. Transcr. pp. 56:19-57:11. Mr. Blaz had been  
24 involved in C.B.'s counseling when C.B. was in the eighth grade. Transcr. pp. 56:23-25, 57:1-3.  
25 Administrative action to correct C.B.'s behavior or punish him for it had failed for the four years

1 before C.B. entered high school. Transcr. p. 89:1-4. Mr. Blaz believed those forms of action  
2 would fail if applied again, leading to his recommendation for C.B.'s expulsion. Transcr. p.  
3 91:4-17.

4 16. Policy 3300P requires an administrator to "provide a written report of suspension that  
5 states reasons for a suspension, including any school rule that was violated, and a notice to a  
6 parent or guardian of the right to a review of a suspension," with a copy of the report and notice  
7 sent to the superintendent. The policy does not provide a timeline for such a report, nor does it  
8 specify which administrator will provide such a report.

9 17. Mr. Robbins' report, written as a summary of the incident and his investigation, was  
10 included in a packet of information provided to the school board trustees, as well as to J.B. and  
11 L.B., prior to the October board meeting. Pre-hearing Conference Transcr. p. 16:2-7, November  
12 28, 2006; Transcr. pp. 8:10-10:19, 20:18-21:17, 102:18-23, 113:22 - 114:19.

13 18. L.B. and J.B. received and read the report prior to the October board meeting.  
14 Transcr. pp. 102:18-103:14, 126:19-127:1.

15 19. Mr. Blaz met with J.B. around September 23, 2006, and he wrote a letter to J.B.  
16 dated September 29, 2006, which addressed the upcoming board meeting and Mr. Blaz's  
17 recommendation for C.B.'s expulsion. Transcr. pp. 66-69.

18 20. Although Mr. Robbins orally informed J.B. and L.B. they had the right to request a  
19 review of C.B.'s suspension, he did not send notification of that right in writing. Transcr. 24:13 -  
20 25:2. Mr. Blaz met with J.B. and discussed C.B.'s behavior and the incident with J.B., prior to  
21 sending a letter to the board recommending C.B.'s expulsion. Transcr. pp. 66:18 - 67:5.

22 21. L.B. received, prior to the October hearing, a letter from Mr. Blaz stating there was  
23 going to be an expulsion hearing. Transcr. pp. 114:23 - 115:1.

24 22. Although written notice was sent to C.B., J.B., and L.B. about the October hearing to  
25 consider the recommendation of expulsion, the notice was not sent by registered or certified  
mail. Transcr. p. 69:11-19.

1           23. Only the Board has the authority to expel a student. Mont. Code Ann. §20-5-202  
2 (2007); Eureka School District Policy 3300P.

3           24. Policy 3310, Student Discipline, includes hazing and bullying in a list of instances  
4 where disciplinary action may be taken against a student. Disciplinary measures include  
5 suspension and expulsion. Policy 3310.

6           25. The Board may expel a student after following specified due process procedures.  
7 Policy 3300P. Those procedures include providing "written notice to a student and parent or  
8 legal guardian of a hearing to consider a recommendation for expulsion, which will be sent by  
9 registered or certified mail at least five (5) school days before the date of the scheduled hearing."  
10 Policy 3300P. Such a hearing "must be conducted during a period of student suspension."  
11 Policy 3300P.

12           26. On October 5, 2006, the Board held a meeting about the potential expulsion of C.B.  
13 The Board voted to expel C.B. from school for the 2006-2007 school year. Uncontested fact, p.  
14 4:3-5, Transcr. of Pre-hearing Conference Call, 2/20/07.

15           27. Because of an error made at the October 5, 2006 meeting, the Board voluntarily held  
16 a second hearing on January 10, 2007, with the agreement of Bs' counsel. Transcr. p. 57:23 -  
17 58:3

18           28. Mr. Blaz sent a letter to the Bs regarding the January 10, 2007, hearing. Transcr. pp.  
19 85:6-8, 104:5-17.

20           29. L.B. had received a confidential packet of information from Mr. Blaz prior to the  
21 board meeting on January 10, 2007, which contained the written summary of the incident report,  
22 counselor's notes, a history of C.B.'s disciplinary issues, and T.B.'s written documentation of the  
23 September 21 incident, as well as a letter from Mr. Blaz stating there was to be an expulsion  
24 hearing. Transcr. pp. 113:22 - 115:1.

25           30. The written notice of the January 10, 2007, hearing to consider the recommendation  
of expulsion sent to Bs was not sent by certified or registered mail. Transcr. p. 69:16.



31. At the board hearing on January 10, 2007, C.B. was present, had an opportunity to hear the charges against him, had an opportunity to cross-examine the district's witnesses, was represented by counsel, and introduced evidence. Transcr. pp. 58:1-18; 71: 3-16; 85:6-21.

32. At the January 10, 2007 hearing, the Board voted to expel C.B. from school.  
Uncontested fact, pp. 3:24-4:9, Transcr. of Pre-hearing Conference Call, 2/20/07.

34. The County Superintendent determined that a pre-suspension conference is not always necessary when a student's presence poses a continuing danger or ongoing threat of disruption to the education process; that Mr. Blaz failed to follow board policy when he did not send written notice of the hearing for expulsion by certified or registered mail; that the Board had the authority to expel C.B.; that board policy recognizes hazing and bullying as grounds for suspension or expulsion; and that C.B.'s right of due process was not violated. Findings of Fact, Conclusions on Law, and Order dated 5/18/07.

## CONCLUSIONS OF LAW AND OPINION

Issue: Did the County Superintendent correctly find that the District complied with due process requirements when the Eureka School Board expelled C.B. for violation of school policy?

In reviewing a decision made by a school district board of trustees, the county superintendent is to submit a final decision in writing. Mont. Code Ann. § 2-4-623(1)(a) (2007). The decision must include findings of fact and conclusions of law, separately stated. *Id.* Findings of fact must be based exclusively on the evidence and on matters officially noticed. Mont. Code Ann. § 2-4-623(2) (2007).

The State Superintendent's duty in this matter is to determine if substantial credible evidence exists to support the County Superintendent's findings. Mont. Admin. R. 10.6.125(4) provides that the "State Superintendent may not substitute his/her judgment for that of the county superintendent as to the weight of the evidence on questions of fact."

Whether or not the District had the authority to expel C.B. for hazing and bullying is a question of fact. The State Superintendent finds there is substantial credible evidence in the

1 record to support the County Superintendent's finding that the Eureka School Board had the  
2 authority to expel C.B. for hazing and bullying. Further, the record provides abundant evidence  
3 to support the Board's decision to expel C.B., based on the details of the September 21, 2006,  
4 incident and C.B.'s prior disciplinary history with the Eureka School District.

### 5 **Due Process**

6 The Montana Constitution, Article II, §7 provides that no person shall be deprived of life,  
7 liberty, or property without due process of law. Students facing suspension must be given some  
8 kind of notice and hearing. *Goss v. Lopez*, 419 U.S. 565, 579 (1975) (students entitled to  
9 protection under due process clause in connection with suspensions, though prior notice and  
10 hearing not always feasible). "Students whose presence poses a continuing danger to persons or  
11 property or an ongoing threat of disrupting the academic process may be immediately removed  
12 from school." *Id.* at 582. "[R]equiring effective notice and informal hearing permitting the  
13 student to give his version of the events will provide a meaningful hedge against erroneous  
14 action." *Id.* at 583. Students who face expulsion may require more formal procedures. *Id.* at  
15 584. A student who faces expulsion is entitled to effective notice of the potential expulsion and a  
16 formal hearing.

17  
18 In *Montanans for Justice v. State, et al.*, 334 Mont. 237, 146 P.3d 759 (2006), Proponents  
19 contended the District Court's denial of their motion to delay trial left them with inadequate time  
20 to prepare their case. *Id.* at 247, 146 P.3d at 767 (citations omitted) (expedited hearing did not  
21 violate proponents' due process rights to a meaningful hearing). The Supreme Court determined  
22 that Proponents' complaint was procedural in nature, and therefore constituted a procedural due  
23 process claim. *Id.* Similarly, here the Bs contend the failure of the District to send notice of the  
24 expulsion hearings by certified or registered mail, per District policy, violated C.B.'s rights to  
25 due process. This, too, is a procedural due process claim.

1 Under both federal and state jurisprudence the requirements for procedural due process  
2 are (1) notice, and (2) opportunity for a hearing appropriate to the nature of the case. As  
3 such, "the process due in any given case varies according to the factual circumstances of  
4 the case, the nature of the interests at stake and the risk of making an erroneous decision."  
5 Otherwise stated, due process requirements of notice and a meaningful hearing are  
6 "flexible" and are adapted by the courts to meet the procedural protections demanded by  
7 a specific situation.

8 *Id.* at 247, 146 P.3d at 767 (citations omitted).

9 The Bs contend that C.B.'s rights to due process in suspension and expulsion were  
10 violated a number of ways.

11 One of the Bs' concerns focuses on the District's contacting of L.B., C.B.'s  
12 grandmother, rather than J.B., C.B.'s father. Given the standing agreement J.B. had with L.B. to  
13 care for C.B., enroll him in school, and act as the school's contact in case of emergencies, Mr.  
14 Robbins' notification of L.B. (in lieu of J.B.) of C.B.'s suspension and Mr. Robbins' subsequent  
15 meeting with L.B. complied with the Eureka School District Policy 3300P requirement on  
16 suspensions for immediate reporting and a conference. Additionally, J.B. met with Mr. Robbins  
17 and was provided a copy of the expulsion recommendation by Mr. Blaz well in advance of the  
18 October 5, 2006, hearing. The District's contacts with L.B. and J.B. comply with Policy 3300P.

19 Another concern raised by the Bs deals with written notice of C.B.'s suspension. Mr.  
20 Robbins provided a written report of the suspension to L.B. and to Mr. Blaz less than a week  
21 after the incident, satisfying the requirement under Policy 3300P that an administrator "provide a  
22 written report of suspension that states reasons for a suspension, including any school rule that  
23 was violated."

24 Bs also raise a concern over the right of C.B. to request a review of C.B.'s suspension;  
25 Policy 3300P specified that such notice of the right to review be in writing. While Mr. Robbins  
orally informed J.B. that he had the right to request a review of C.B.'s suspension before Mr.  
Blaz, he did not send notification of that right in writing. The failure to provide notice in writing

1 is de minimis, as Bs were adequately informed of their right to a review of C.B.'s suspension:  
2 Mr. Blaz reviewed and discussed the suspension report with J.B. prior to the hearing.

3 Bs also take issue with the timing of the hearing on expulsion, which under Policy 3300B  
4 is to occur within the 10-day suspension period. The Board held a hearing relating to the  
5 September 21, 2006 incident involving C.B. and T.B. on October 5, 2006, within the period of  
6 C.B.'s 10-day suspension from school. The timing of the initial October 5, 2006 hearing,  
7 satisfies Policy 3300P. Upon discovering procedural errors had occurred at the first hearing, the  
8 Board, with the agreement of Bs, through their attorney, agreed to a rehearing scheduled for  
9 January 10, 2007.

10 Finally, Bs assert that C.B.'s right to due process was violated because the District  
11 failed to send the written notice of the hearing on expulsion by certified or registered mail, per  
12 Policy 3300P. "[D]ue process generally requires notice of a proposed action which could result  
13 in depriving a person of a property interest and the opportunity to be heard regarding that  
14 action." *Pickens v. Shelton-Thompson*, 300 Mont. 16, 21, 3 P.3d 603, 606 (2000) (father's right  
15 to due process was violated when notice provision in ALJ's decision and order was misleading),  
16 quoting *Dorwart v. Caraway*, 290 Mont. 196, 966 P.2d 1121. The court in *Pickens* continued,

17 Notice sufficient to comport with due process is that which is reasonably calculated,  
18 under all circumstances, to inform parties of proceedings which may directly affect  
19 their legally protected interests. . . . Moreover, when applying these guidelines to  
20 determine whether a party received adequate notice, it must be remembered that due  
process is a flexible concept and should be tailored to the circumstances of each case in  
a manner that meets the needs and protects the interests of the parties involved.

21 *Id.* at 21-22, 3 P.3d at 607. "The true requirement for due process is notice that is reasonably  
22 calculated to apprise all interested parties of the pendency of the action and afford them an  
23 opportunity to be heard and present their objections." *Great Falls National Bank v. McCormick,*  
24 *et al.*, 152 Mont. 319, 326, 448 P.2d 991, 995 (1968) (notice requirements satisfied as to parties  
25 who breached terms of trust indenture) (citations omitted).

1 Although the written notice provided to Bs of the January 10, 2007, hearing to consider  
2 the recommendation for C.B.'s expulsion was not sent by registered or certified mail, this failure  
3 is de minimis, as Bs were adequately informed of and had actual notice of the hearing. C.B. was  
4 present, had an opportunity to hear the charges against him, had an opportunity to cross-examine  
5 the district's witnesses, was represented by counsel, and introduced evidence. Both J.B. and L.B.  
6 acknowledged receipt of the notices prior to the hearings; therefore the District substantially  
7 complied with notice requirements under Policy 3300P.

8 Bs contend that J.B.'s and L.B.'s parental (and grandparental) rights to due process were  
9 violated. However, J.B. and L.B. have no life, liberty, or property interest of their own at stake  
10 in this action. Courts, relying on the compelling U.S. Supreme Court decision in *Goss*, have  
11 consistently rejected any claims by parents (and, by implication, grandparents) to due process  
12 rights in the context of student disciplinary actions. *Wofford v. Evans*, 390 F.3d 318, 325 (4<sup>th</sup>  
13 Cir. 2004); *Zehner v. Central Berkshire Regional School District*, 921 F. Supp. 850, 859 (D.  
14 Mass. 1995) ("the Court has found [no law] which would indicate that notice to a student in such  
15 circumstances is inadequate unless it is provided to the student's parents as well. Rather, 'when a  
16 student is suspended, it is the student who is entitled to due process because it is the student-not  
17 his parents-who has a right to a free public education'"); *Boster v. Philpot*, 645 F.Supp. 798, 807  
18 (D.Kan.1986) ("the right to a free public education is a right which belongs to students, rather  
19 than their parents"). Therefore the Bs have no right here to due process, and their claim to such  
20 fails.

21 The State Superintendent finds the County Superintendent correctly interpreted the law in  
22 his Conclusions of Law stating that the District complied with due process with requirements  
23 when it expelled C.B. for violation of school policy.

1 DECISION AND ORDER

2 The Lincoln County Superintendent's Order is AFFIRMED.

3 DATED this 30th day of October, 2007.

4  
5 /s/ Linda McCulloch  
6 Linda McCulloch,  
7 Superintendent of Public Instruction

8 **NOTICE:**

9 You are entitled to judicial review of this Decision and Order in accordance with Mont.  
10 Code Ann. § 2-4-702 (2007). Judicial review may be obtained by filing a petition in district  
11 court within thirty days after the service of this Order.

12 **CERTIFICATE OF SERVICE**

13 THIS IS TO CERTIFY that on this 31st day of October, 2007, I caused a true and exact  
14 copy of the foregoing NOTICE AND BRIEFING SCHEDULE to be mailed, postage prepaid, to  
15 the following:

16 James C. Bartlett  
17 Attorney at Law  
18 PO Box 2819  
19 Kalispell MT 59903-2819

20 Elizabeth A. Kaleva  
21 Attorney at Law  
22 PO Box 9312  
23 Missoula MT 59807-9312

24 Ron Higgins  
25 Lincoln County Superintendent of Schools  
418 Mineral Avenue  
Libby MT 59923

/s/ Kathleen M. Magone  
KATHLEEN M. MAGONE  
Chief Legal Counsel